

EXHIBIT 6

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

HONORABLE GEORGE C. HERNANDEZ, JUDGE

DEPARTMENT 17

CENTER FOR BIOLOGICAL)
DIVERSITY, and SIERRA) CASE NO. RG15769302
CLUB, nonprofit)
corporations,)

Petitioners,)
vs.)

CALIFORNIA DEPARTMENT)
OF CONSERVATION,)
DIVISION OF OIL, GAS,)
AND GEOTHERMAL)
RESOURCES, and DOES 1)
through 20, inclusive,)

Respondents.)

AERA ENERGY, LLC; BERRY)
PETROLEUM COMPANY, LLC;)
CALIFORNIA RESOURCES)
CORPORATION; CHEVRON)
U.S.A., INC.;)
FREEPORT-MCMORAN OIL)
& GAS, LLC; LINN ENERGY)
HOLDINGS, LLC; and)
MACPHERSON OIL COMPANY,)

Respondents in)
Intervention.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
July 2, 2015

Reported by: DREW E. COVERSON, C.S.R. 10166
Court Reporter

A P P E A R A N C E S

FOR PETITIONERS:

EARTHJUSTICE

BY: WILLIAM ROSTOV, ESQ.

BY: TAMARA ZAKIM, ESQ.

50 California Street, Suite 500

San Francisco, California 94111

(415) 217-2000

FOR PETITIONERS:

CENTER FOR BIOLOGICAL DIVERSITY

BY: HOLLIN KRETZMANN, ESQ.

1212 Broadway, Suite 800

Oakland, California 94612

(510) 844-7100

FOR THE INTERVENORS: CALIFORNIA DEPARTMENT OF
CONSERVATION, DIVISION OF OIL, GAS, AND GEOTHERMAL
RESOURCES; AERA ENERGY; BERRY PETROLEUM; CALIFORNIA
RESOURCES CORPORATION; CHEVRON; FREEPORT-MCMORAN; LINN
ENERGY HOLDINGS AND MACPHERSON OIL:

GIBSON, DUNN & CRUTCHER, LLP

BY: JEFFREY D. DINTZER, ESQ.

BY: NATHANIEL P. JOHNSON, ESQ.

BY: MATTHEW C. WICKERSHAM, ESQ.

333 South Grand Avenue, Suite 4600

Los Angeles, California 90071

(213) 229-7000

FOR DEFENDANTS, WESTERN STATES PETROLEUM ASSOCIATION;
CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION AND
INDEPENDENT OIL PRODUCERS AGENCY INDUSTRY:

PILLSBURY, WINTHROP, SHAW, PITTMAN, LLP

BY: BLAINE I. GREEN, ESQ.

Four Embarcadero Center, Suite 2200

San Francisco, California 94111

Tel: (415) 983-1476

(APPEARANCES CONTINUED)

FOR THE STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BY: BAINE P. KERR, ESQ.
300 South Spring Street, Suite 1702
Los Angeles, California 90013
(213) 620-2210

HUTCHINGS LITIGATION SERVICES - GLOBAL LEGAL SERVICES
800.697.3210

1 Thursday, July 2, 2015

2:48 p.m.

2 P R O C E E D I N G S

3 THE COURT: The center for Biological
4 Diversity, et al. Okay. When everyone settles in, I'm
5 going to ask you to note your appearances for the
6 record, of course, starting with plaintiff. Who do we
7 have here today?

8 MR. ROSTOV: Good afternoon. William Rostov
9 on behalf of Center for Biological Diversity.

10 MS. ZAKIM: Good morning, Tamara Zakim also
11 for plaintiffs.

12 MR. KRETZMANN: Hollin Kretzmann for the
13 Center for Biology Diversity.

14 MR. KERR: Good afternoon, Your Honor.
15 Deputy attorney Baine Kerr, for the Department of
16 Justice.

17 MR. DINTZER: Good afternoon.
18 Jeffrey Dintzer on behalf of Aera Energy, LLC, Berry
19 Petroleum, California Resources Corporation, Chevron
20 USA, Freeport-McMoran Oil & Gas, LLC, Linn Energy
21 Holdings and Macpherson Oil Company.

22 MR. GREEN: Good afternoon, Your Honor.
23 Blaine Green on behalf of Western States Petroleum
24 Association, Independent Oil Producing Agency, as well
25 as California Independent Petroleum Association.

1 MR. WICKERSHAM: Matthew Wickersham on behalf
2 of Bay Area Petroleum, California Resource Corporation,
3 Chevron USA, Freeport-McMoran, Macpherson Oil Company
4 and Linn Energy Holdings.

5 THE COURT: Anyone else? I don't have anyone
6 online on the case. Welcome.

7 MR. JOHNSON: Nathaniel Johnson representing
8 Aera Energy, Berry Petroleum, Chevron USA, California
9 Resources Corporation, Freeport-McMoran, Linn Energy
10 Holdings and Macpherson Oil Company.

11 THE COURT: Thank you. This is a motion for
12 a preliminary injunction. The Court, after reviewing
13 this matter, had ordered the parties to appear and had
14 questions. I think we spent some time spelling it out,
15 because as you all appreciate, the filing or the
16 ordering of a preliminary injunction is a significant
17 and, at times, difficult task.

18 And so did each of you have an opportunity to
19 review the tentative ruling and questions you had?

20 What I'm going to do, then, is to permit the
21 moving party to address the issues to the extent they
22 can. Really, in summary, to explain why the Court
23 should issue a preliminary injunction and what sort of
24 injunction it should be.

25 You will remember at the last part of my

1 tentative ruling, the Court explained that the Court
2 needed a clearer idea of the scope of the relief
3 requested, so I'm going to give the plaintiff an
4 opportunity to -- Petitioners an opportunity to explain
5 why the Court should grant the relief that you are
6 seeking, making it clear what it is, and then I'll give
7 the defendants each an opportunity to respond. In
8 essence, the burden of proof, you will have the last
9 word. Go ahead.

10 MR. ROSTOV: Thank you, Your Honor.
11 William Rostov on behalf of plaintiffs, Center for
12 Biological Diversity. Thank for your tentative ruling.
13 We'll address the issues that you raised.

14 First, I want to say why we're here. We're
15 here because the public has learned earlier this year
16 the Division has identified thousands of oil industry
17 wells injecting into protected underground sources of
18 drinking water.

19 The Safe Drinking Water Act's only purpose is
20 to protect drinking water. It protects current
21 drinking water and future sources of drinking water.
22 As current sources of drinking water dwindle, future
23 sources become more important.

24 Congress cared so much about protecting these
25 current and future drinking water sources that they

1 created a law. That statutory framework is set up to
2 basically say sources of underground drinking water
3 cannot be touched until there's been a robust review
4 process that ensures no harm to that water or
5 surrounding waters.

6 This case is really about ongoing harm to
7 future drinking water sources as it is about harm to
8 current drinking water all during the historic drought.
9 That sets the context.

10 The Division, the Division of Oil, Gas &
11 Geothermal Resources -- that will be the only time I
12 say that.

13 THE COURT: From the department?

14 MR. ROSTOV: Of Conservation.

15 THE COURT: A subgroup of the Department of
16 Conservation.

17 MR. ROSTOV: Correct. And for now I'll refer
18 to it as "the Division" for simplicity for everybody.
19 It is a tongue twister. It's typically referred to as
20 DOGGR. I'm going with the Division.

21 I will discuss the statutory framework. You
22 had some questions about that, the plaintiffs'
23 likelihood of success on the merits, and then I'll
24 explain how the irreparable harm from contamination of
25 the aquifers outweighs --

1 THE REPORTER: I cannot understand what you
2 are saying.

3 MR. ROSTOV: Sure.

4 I will discuss the statutory framework and
5 then the plaintiffs' likelihood of success on the
6 merits, and then I'll explain the irreparable harm from
7 the contamination of the aquifers. I'll explain how
8 that contamination outweighs any claim of economic harm
9 from the oil industry and any regulatory burden on the
10 Division.

11 In discussing these issues, I hope to answer
12 the questions that this Court raises in the tentative
13 ruling. So first let me start with the statutory
14 framework. There's a clear, undisputed framework of
15 the federal Safe Drinking Water Act.

16 The Safe Drinking Water Act is a preventative
17 statute that's deemed to stop harm before it occurs.
18 The intent in creating the Safe Drinking Water Act was
19 to ensure that aquifers are protected from industry
20 operations, including the injections at issue here
21 today.

22 You review first to ensure no harm. This is
23 done through a robust exemption process, which the
24 Division and industry admits has not been done here.
25 No one disputes that under the Safe Drinking Water Act

1 that there is a flat prohibition on Class II wells from
2 injecting into underground sources of drinking water
3 unless there's an aquifer exemption in place that has
4 been approved by both state and federal authorities.

5 In California, no one disputes that the
6 memorandum of agreement, the agreement between the
7 United States Environmental Protection Agency, EPA and
8 the Division set forth how the Division implements this
9 law -- the federal law.

10 No one disputes that the federal law defines
11 these underground sources of drinking water to include
12 all nonexempt aquifers containing groundwater with less
13 than 10,000 milligrams per liter of total dissolved
14 solids at a sufficient quantity to supply a public
15 water supply system. I'll refer to this as the
16 "federal standard."

17 The Division has confirmed that aquifer
18 exemptions must be obtained first before any injections
19 into underground sources of drinking water may occur.
20 For example, on page 9 of the notice of proposed
21 rulemaking, which is the Zakim declaration, Exhibit I,
22 the Division explicitly states that the aquifers that
23 meet the federal definitions are, and I'm quoting:

24 "Subject to protection as underground sources
25 of drinking water unless and until they are covered by

1 an aquifer exemption. To be very clear, failure to
2 comply with this exemption requirement of the Safe
3 Drinking Water Act is a violation of the law."

4 So not having the exemptions is a violation
5 of the law. In that same paragraph of the notice of
6 rule that I just quoted -- I'm also going to quote. It
7 says, "The Division's allowance of injection wells into
8 nonexempt underground sources of drinking water
9 conflicts with the terms of the Division's primacy
10 agreement with the US EPA, which defines the parameters
11 of the states' federally approved underground injection
12 control program."

13 So essentially DOGGR has admitted that they
14 are out of compliance with the Safe Drinking Water Act.
15 The attachments to the Division's May 15th letter to
16 EPA identify wells that do not have an aquifer
17 exemption. The titles of the attachments are
18 instructive.

19 Attachment B is entitled "Class II Water
20 Disposal Wells Permitted to Inject into
21 Nonexempt-Non-Hydrocarbon-Bearing Aquifers."

22 Attachment C is entitled "207 Wells Injecting
23 into Aquifers that are Reasonably Expected to Supply a
24 Public Water Supply System."

25 The Division has a specific list of wells.

1 This goes to your question about the scope of the
2 injunction. The Division has a specific list of wells
3 that are operating without exemptions. So since these
4 wells are operating without exemptions, these wells are
5 currently in violation of the Safe Drinking Water Act.

6 The oil companies are very familiar with this
7 list as their own declaration cites to the list and
8 specifies that the various companies have over 2,000
9 wells that are currently injecting into these nonexempt
10 aquifers. So this list actually defines the scope of
11 the injunctive relief we want on the second cause of
12 action.

13 The first cause of action is enjoining a
14 preliminary injunction on the emergency regulations and
15 declare them void. The legal framework of review is
16 review first before allowing anything to go into a
17 protected aquifer is simple. You review first, and
18 then you allow the injections only if the exemption
19 process is completed and there's approvals from state
20 and federal authorities and public process.

21 Although this legal framework is simple, the
22 hydrology and geology of aquifers is very complicated.
23 There are many pathways in which contamination can
24 occur: Direct injection into an aquifer, there's
25 movement of contaminant from one aquifer to another,

1 there's fracturing of an aquifer.

2 We put in a declaration of Timothy Ginn that
3 provides an extensive discussion on this. I think it's
4 easier to think about it as the legal framework in
5 terms of an analogy. I would use the analogy of the
6 FDA. The FDA essentially does extensive studies before
7 it allows drugs to be marketed. It approves it, and if
8 it approves it, only then allows it to be marketed.

9 When they are doing the studies, they also
10 study the interactions of that one drug with other
11 drugs. So in other words, they are looking at the
12 synergistic effects. The same thing needs to be
13 thought of here. Once you inject in, there's many
14 things that can happen.

15 And that's why the Court -- United States
16 versus King. I'll cite the case. It's 660 F.3d 1071,
17 1079 held that it's presumed that, quote, "The
18 injection is a danger of underground sources of
19 drinking water until shown to be safe." So you need
20 the robust exemption process before you allow the
21 injections.

22 And I just want to go over the exemption
23 process real fast; Slowly for the court reporter. The
24 exemption process requires the submissions of extensive
25 information about the geology and hydrology of the

1 formation of an aquifer. After it is submitted from an
2 operator, Mr. Dintzer's client, there's a public
3 process with public comments -- first after submitted,
4 the Water Board and the Division need to review it and
5 approve the application. During that, they also have a
6 public process before approval.

7 And if the approval is put in place by the
8 state agency, then it's forwarded to EPA for its
9 evaluation and approval. All of this must occur before
10 an injection well is allowed to operate in an aquifer.
11 And obviously, given the description of the process,
12 there's no guarantee that exemptions will ever occur.
13 You have public process. Might not be enough
14 information for the oil companies.

15 So I'm getting to the crux of the case here,
16 and that is our concern that injections are occurring
17 into protected aquifers where no exemptions have been
18 obtained. Thus, threatening both current and future
19 drinking water sources.

20 The tentative ruling talks about how the
21 plaintiffs failed to separate between procedural and
22 substance of the statute, but our point is the statute
23 is both procedural and substantive. So it's procedural
24 in the sense there's a process, and there's a process
25 where you have to do exemptions before injection. So

1 that's procedural.

2 It's also substantive at the same time
3 because the statute prevents the injections until
4 proven safe. So if you don't have a process and the
5 approval process and an approval of an aquifer becoming
6 exempt, you cannot allow the exemption.

7 The Court has questioned the legality of the
8 Division's action. And we really think the emergency
9 regulations are the best evidence of the Division's
10 failure, the regulations they proposed.

11 The notice of approval states, and I'm just
12 going to quote it, because I think it's very important.
13 It's Exhibit 9 to the Zakim declaration, "This
14 rulemaking action establishes deadlines for the oil and
15 gas industry to obtain aquifer exemptions in an effort
16 to bring California's Class II underground injection
17 control program into compliance with the federal Safe
18 Drinking Water Act."

19 The Division admits that it's out of
20 compliance, that there are injections into nonexempt
21 wells. The tentative ruling states that the
22 regulations do not affirmatively authorize injections
23 into drinking water sources.

24 As just described, the regulations do allow
25 thousands of wells to continue injecting into

1 underground sources of drinking water that the Division
2 itself has identified for meeting the federal water
3 quality standard for protection.

4 Another point of the tentative, it also says
5 that the regulations, and I'm going to quote it, "Sets
6 deadlines for industry actors to satisfy the Division
7 by dates certain that injections are not causing harm
8 so that existing permits are not rescinded or
9 exemptions, if not previously given, can be granted."

10 If the regulations do this, as the Court is
11 saying, this is exactly opposite of what the Safe
12 Drinking Water Act requires.

13 The showing of no harm must occur first, not
14 later. Drinking water can't be injected into until
15 then. This, once again, is similar to that FDA analogy
16 I made. You have to study the drugs before you allow
17 them into the market. You have to study where the
18 injections are going before you allow the injections.

19 An aquifer is nonexempt if it's not gone
20 through the exemption process. Here injections are
21 being allowed before the exemptions are in place.
22 Moreover, the emergency regulations allow these
23 injections which, by definition, under the Act do cause
24 harm. I'll talk about that a little more in the
25 balancing harm section.

1 But first I just want to address the
2 illegality of the emergency regulations and go through
3 that and work my way through the other questions in the
4 tentative. So it is true, as the Court notes, that the
5 regulations are designed to allow time for aquifer
6 exemptions to be granted, but there's a fundamental
7 flaw with the Division's approach.

8 The Division does not have the authority to
9 issue these emergency regulations in the first
10 instance, because the Safe Drinking Water Act doesn't
11 give a state authority to undermine the Act's
12 requirements. That's what this provision does -- these
13 regulations do.

14 The Division is required to collect
15 information first and then do the aquifer exemptions.
16 These regulations permit continued contamination of the
17 protected underground sources of drinking water instead
18 of protecting them until further review, the exact
19 opposite of what the Act requires.

20 This, by itself, should sink the emergency
21 regulations. The Division has no authority to adopt
22 regulations that conflict with the Safe Drinking Water
23 Act and the primacy agreement. And we cited in our
24 papers a case called Canteen, which stands for that
25 proposition. That's a proposition that's well-known in

1 law in general.

2 Furthermore, these regulations are invalid,
3 because they do not effectuate the purpose of the Act,
4 which requires exemptions to be in place before
5 allowing injections.

6 This is also opposite the cases we cited
7 where the state adopted emergency regulations to come
8 into immediate compliance with federal law. Here, the
9 cases we cited -- one of the cases, but there's a bunch
10 them -- Doe versus Wilson is an idea where the federal
11 government changed Medicare regulations, and the state
12 needed to comply with the new Medicare regulations, so
13 they did an emergency regulation to come into
14 compliance. The state said they didn't -- that was
15 permissible. Essentially, the state can change and use
16 emergency regulations to come into compliance with the
17 law, but what DOGGR is doing is the opposite.

18 Here, the regulations delay compliance. The
19 true -- here, the regulations delay compliance and
20 turns the intent of the Safe Drinking Water Act really
21 upside down by permitting the injections first into
22 these nonexempt aquifers.

23 If the regulations did what the agency did in
24 Doe, which is the case I just mentioned, and ordered
25 immediate compliance with federal law, which is what we

1 are here arguing for, then they would conform with the
2 Safe Drinking Water Act.

3 In granting Plaintiffs' request of relief,
4 and ordering the Division to come into immediate
5 compliance, the Division could, in fact, promulgate
6 emergency regulations, like in Doe, to immediately lead
7 to the stopping of these illegal injections, and the
8 Court references the permanent rulemaking.

9 I think it's really important to note about
10 the permanent rulemaking that there's nothing more --
11 those rules are nothing more than a final version of
12 the emergency regulation. They allow the same unlawful
13 conduct, have the same timetable, and they suffer from
14 the same fatal flaw, that the Division lacks the
15 authority to issue them in the first place.

16 Also, I want to now turn to the emergency
17 findings themselves. So the emergency findings do not
18 support an emergency. The standard for emergency comes
19 from Sonoma. And the standard says, "There must be a
20 situation of grave character and serious moment."

21 Our position is the real public health
22 emergency is the drought and the harm caused by the
23 regulations allowing the continued contamination of
24 these underground sources of drinking water that are
25 protected by the Safe Drinking Water Act. These

1 underground sources of drinking water are becoming
2 scarcer and scarcer because of the drought.

3 The Division also justifies the regulations
4 based on private harm to the oil industry. The
5 standard for emergency regulations is to protect public
6 health and welfare, not private interest. That is not
7 a legitimate reason for emergency regulations.

8 The tentative ruling states that the
9 emergency regulations provide new rules for information
10 collection, but this is not right. The Division
11 already has power to review the injections, and it has
12 been doing so on-case-by-case basis.

13 They identify more than 2,500 injections in
14 nonexempt aquifers, and it has continued its review as
15 recently as May 15th, as evidenced by a letter from the
16 Division and the Water Board to EPA. They reviewed all
17 the Class I injection wells, and they also identified
18 3,600 cyclic steam injection wells that didn't even
19 have -- potentially didn't even have permits.

20 The Division has gathered the information
21 already through it's case-by-case analysis of all these
22 wells. The Division has gathered enough information
23 with regard to 2,500 wells at issue, and now it needs
24 to follow the law. It needs to follow the dictates of
25 the Safe Drinking Water Act.

1 The Division also argues that it might lose
2 primacy. In other words, the EPA may take away its
3 program. The Division hasn't shown that losing primacy
4 justifies emergency. And even if it did, what we are
5 proposing makes it more possible for the Division to
6 maintain primacy. The EPA wants this problem changed
7 now, not in the future.

8 So notwithstanding any deference the Court
9 gives to the finding of the emergency regulations, the
10 regulations violate the Safe Drinking Water Act, as I
11 described earlier, and that fundamental flaw means
12 regulations can be struck down no matter what.

13 Now we'll discuss our second cause of action.
14 The whole discussion I've had up to now about the
15 statutory framework really makes the point of our
16 second cause of action, that the Division is abusing
17 its discretion by allowing thousands of injections to
18 occur first and assessing the harm of these injections
19 second.

20 The Division's mandatory duty to prohibit
21 injection in nonexempt aquifers is explicitly set forth
22 in the primacy agreement, which reflects congressional
23 intent.

24 I'm now going to discuss some of the cases
25 Your Honor raised in the tentative ruling. The AIDS

1 Health Care Foundation case actually defines the
2 mandatory duty. It reminds us that, quote, "Correct an
3 agency's abuse of discretion where the action that's
4 being compelled is ministerial." Then it defines the
5 ministerial act, which is one where the agency, quote,
6 "Is required to perform in a prescribed manner, without
7 regard to its own judgment or opinion concerning such
8 act's propriety."

9 What we have here is exactly that: An act
10 that the Division is required to perform in a
11 prescribed manner. The Division must obtain exemptions
12 before allowing the injections. There is no discretion
13 under the Safe Drinking Water Act or the memorandum of
14 understanding for the Division to apply its judgment to
15 do things in a different order.

16 California Trout is a case that the Court
17 should rely on, and we believe it's instructive. There
18 the Court found that certain conditions were required
19 to apply to licences for the diversion of water in ^
20 County. This was a mandatory requirement.

21 So as a result, the Court issued a writ to
22 force the Water Board to comply with the mandatory duty
23 as set forth by the statute. There is no discretion in
24 the statute. The statute provided no discretion to the
25 Water Board. As a matter of fact, that writ changed

1 the terms of the licenses of the permitting operator
2 and, essentially, reduced steam flows.

3 The same would be true in this case. The
4 Division has a nondiscretionary duty to prohibit
5 injections into nonexempt aquifers. Yet, the Division
6 also admits that it's violating this duty for thousands
7 of wells by not having aquifer exemptions in place.

8 So as the court in the California Trout
9 states at Cal.App.3d 203 "An administrative agency has
10 no discretion to engage in an unjustified unreasonable
11 delay in the implementation of statutory commands."
12 Cal. Trout says an agency cannot rely on enforcement
13 discretion to avoid mandatory duties. That's what we
14 have here.

15 This is not like the facts in the AIDS Health
16 Foundation case. The mandatory duty in that case,
17 unlike the mandatory duty here, was explicitly
18 limited -- was really imbued with agency discretion.

19 The defendant LA County Department of Public
20 Health has a mandatory duty to take measures that are,
21 quote/unquote, "reasonably necessary to prevent the
22 spread of disease." There the underlying mandatory
23 duty already allowed for discretion.

24 This is also not like the case in Schwartz,
25 where there's no mandatory duty even found. Unlike the

1 case in AIDS Health Foundation, the duty here is not
2 imbued with discretion. The prescribed manner for
3 allowing injection in California has been acknowledged
4 by the Division.

5 The prescribed manner is, once again, to
6 obtain the exemptions first and then, and only then,
7 allow the injections. This duty permits no agency
8 judgment, discretion or alternative course of action.

9 Moreover, in response to the Court's
10 tentative, the facts do show that the Division has done
11 a horrendous job at regulating the oil industry. Their
12 record contains a letter from eight legislators to
13 Governor Brown that succinctly describe the Division as
14 a failed regulatory agency. That's Exhibit H to the
15 Zakim declaration.

16 These legislators request the immediate
17 shutdown of all the wells without exemptions, the same
18 relief we request. Like I said earlier, adopting an
19 illegal compliance plan that conflicts with the
20 Division's federally mandatory duty to prohibit
21 injections until there the exemptions are in place does
22 show that the Division has disregarded the regulatory
23 responsibility.

24 And I think it might be good to quote from
25 Canteen to really drive that home. This is Canteen

1 Corporation versus State Board of Equalization at 174
2 Cal.App.3d 952 at 220. It's quoting the Supreme Court.
3 "It is settled that administrative regulation that
4 violates acts of the legislature are void, and no
5 protestations, that they are merely an exercise of
6 administrative discretion can sanctify them. They must
7 conform to the legislative role if we are to preserve
8 the system of government."

9 And that's why the emergency regulations need
10 to be struck down, and why there needs to be a
11 preliminary injunction.

12 We'll also talk about the harm later. Now
13 I'll address the Court's questions about the nature of
14 the injunction. The Court has questioned the scope of
15 the mandatory injunction requested by Plaintiffs. The
16 mandatory injunction proposed by Plaintiffs would apply
17 to the Division an existing list of wells already
18 identified as being out of compliance.

19 The Court can identify that list in its
20 order. That's the scope of the injunction. Plaintiffs
21 seek a remand to the agency to conform with its
22 mandatory duty of prohibiting injections into these
23 identified nonexempt aquifers. In other words, aquifer
24 exemptions must go through a public process and be
25 approved before injections can occur.

1 The agency has several options here. One
2 option is to do a case-by-case issuing of stopping
3 injection order. They can adopt emergency regulations
4 that does comply with the Administrative Procedures Act
5 and protects public health. That would order the
6 cessation of the injections until there's aquifer
7 exemptions, if those can be obtained. It's hard to
8 even tell how many of these will be obtained.

9 Before I turn to the harm argument, I want to
10 address the Court's several questions about process of
11 stopping the injections to the extent we can answer
12 those. Those were questions for the Division. I'll
13 probably want to reply to what they say.

14 The Court asked several questions: Is there
15 a process under existing law that the Division must
16 follow? Are findings required? Must the Division's
17 order shutting of a well be supported by evidence that
18 the shut-in is necessary to avoid certain harms?

19 Exhibit W, which is an emergency order, we
20 think this is a good example of how the Division has
21 approached stopping injections. It shows that the
22 Division -- essentially what the Division has done in
23 the past.

24 To date, the Division has shut down 23
25 injection wells -- I mean, shut down injections of 23

1 wells operating on nonexempt aquifers. This process
2 shows that the Division can and does stop injections in
3 nonexempt aquifers. It shows that the Division can
4 stop these injections immediately based on the
5 information it already has and is before the Court.

6 The act of injection into the underground
7 source of drinking water itself is sufficient evidence
8 to shut down a well. The Division has "cease and
9 desist" authority under Pub. Res. Code section 3225.
10 And that section has a findings requirement and an
11 appeals process. The Court was asking about the
12 process. The order must include a recitation of the
13 act or omission which the operator is charged.

14 Finally, there's an appeal process. There's
15 a timeline for providing a hearing which plays out in
16 two months following the order's issuance.

17 If you look at Exhibit W, the findings are
18 saying "mays." It's really just about injection into
19 this water. The water may contain underground water
20 suitable for irrigation. I'm reading from page 4. May
21 contain water with less than 3,000 parts per million
22 totally dissolved solid. The federal standard is
23 10,000. May have specifically been denied exempted
24 aquifer status by the US EPA in connection with the
25 Division's application. It's all "may."

1 The order essentially shuts it down based on
2 the same facts that we're alleging these wells can be
3 shut down on.

4 Now I'll turn to the harm argument.
5 Plaintiffs have shown irreparable harm. The balance of
6 harm favors the preliminary relief that we seek.
7 First, there's a presumption of harm for the Safe
8 Drinking Water Act. Case laws reflects the reality of
9 high-volume injections having impacts on these
10 aquifers.

11 With the FDA example, you really need to
12 study the stuff before you can allow the injections
13 because we just don't know about the hydrology and
14 geology of these until they are studied. That's the
15 exemption process.

16 As I mentioned earlier, there's a list
17 showing that these injections violate the Safe Drinking
18 Water Act prohibition on injection into nonexempt
19 aquifers. That Act itself is designed to protect
20 underground sources of drinking water. That's key.
21 It's designed to protect the water in these aquifers.

22 As I mentioned earlier, the Court in United
23 States in King presumed that injections will endanger
24 an underground source of drinking water until shown to
25 be safe. Therefore, violations must be considered

1 proof of environmental harm.

2 The Court refers to San Francisco Bay
3 Conservation case. We believe that case is right on
4 point, even though it involved a different statute.
5 There the case essentially said finding a violation of
6 environmental statute, the McAteer Act (phonetic),
7 environment statute does constitute harm under the law
8 to support a request for preliminary injunction. That
9 case has some very interesting language.

10 I'll read from that case, as well.
11 San Francisco Bay, 26 Cal.App.4th at 125. It says,
12 "Environmental legislation represents exercise by
13 government of the traditional power to regulate public
14 nuisances. Where the legislature has determined that a
15 defined condition or activity is a nuisance, it would
16 be a usurpation of the legislative power for a court to
17 arbitrarily deny enforcement merely because in its
18 independent judgment the danger caused by violation was
19 not significant."

20 So since there's a judgment by congress that
21 you need these exemptions first before you allow the
22 injection, that is proof of harm.

23 And as the Court acknowledges, Mr. Bishop
24 does admit the obvious, that injections into wells will
25 contaminate an aquifer. Then the Court goes on to say

1 that the plaintiffs do not provide information that
2 injections are degrading the quality of any nonexempt
3 aquifers.

4 But Mr. Bishop's statement that we cite to
5 and quote actually does say this exact information. He
6 says that injections into the underground sources of
7 drinking water cause contamination, and that this
8 contamination is difficult to remediate.

9 The Court appears to be focusing on the
10 Division and the oil intervenor's claim that all that
11 matters is harm to active drinking water sources, and
12 that's really shortsighted. It's also a red herring.

13 Mr. Bishop really explains the difference.
14 He explains there's two questions on the table. One,
15 that there was harm to the underground source of
16 drinking water, and that's what that quote goes to.
17 And then he was saying that was different to the harm
18 to the public water supply sources.

19 He made that distinction because he was
20 saying the Division has been focusing on these public
21 water supply systems. We were talking to legislature,
22 but I don't even understand that. There's actually
23 contamination in violation of the Safe Drinking Water
24 Act by just the very nature of these injections.
25 That's what he says.

1 And then Plaintiffs have shown, based on the
2 Division's own admissions, that thousands of
3 specifically identified wells are illegally injecting
4 into underground sources of drinking water. This is
5 not a generalized admission as the tentative seems to
6 imply. There's a list of wells.

7 We have the statutory framework, which says
8 if you don't have an approved exemption that's gone
9 through the process, you are not allowed to inject.
10 Then you have the Division's new document. It was new
11 from when we filed our preliminary injunction from
12 May 15th that demonstrates that there continues to be
13 new harm to public water supply well systems that were
14 uncovered recently, and yet the Division, even for
15 those that they claim has not issued orders to stop
16 that activity.

17 And as I mentioned earlier, the attachment to
18 the Division's May 15 letter really is instructive.
19 I'm going to read them again because they state the
20 issue right there and the harm. Attachment B is
21 entitled "Class 2 Water Disposal Wells Permitted to
22 Inject Into Non-Exempt Non-hydrocarbon-bearing
23 Aquifers." Attachment C is entitled "Wells Injecting
24 Into Aquifers That Are Reasonably Expected to Supply a
25 Public Water System."

1 We also filed with respect to harm two
2 declarations that corroborate all of the evidence we
3 put in our initial motion. We had the declaration of
4 Timothy Ginn, and he discusses how the stresses of the
5 drought is placing stress on groundwater resources.
6 Essentially, we are already using our groundwater
7 resources. We need to prevent contamination on the
8 scarce resources that we have.

9 He also explains how using the enhanced oil
10 recovery -- actually, there's two types of wells at
11 issue here. They may talk more about it. There's the
12 wastewater injection wells and the enhanced oil
13 recovery wells. Mr. Ginn talks about how the enhanced
14 oil recovery wells can cause harm by changing the
15 hydrology and geology of the formations.

16 He actually relates an interesting study from
17 2014 in Kern County that shows that the oil drilling
18 now is at the same depth -- relative depth as the water
19 systems, the water that's being supplied for drinking
20 water. So the interaction in that study, you can draw
21 your own conclusions.

22 There's underground water that could be
23 affected by the enhanced oil recovery. Mr. Ginn draws
24 the conclusions, is what I should be saying. Mr. Ginn
25 draws conclusions and further shows the irreparable

1 harm from the enhanced oil recovery.

2 We also had a declaration of Matthew Hagemann
3 where he talks about the environmental toxic effects of
4 disposing oil industry waste water. He describes a
5 whole slew of chemicals, which I will not bore you
6 with, which one is benzene, which is cancer-causing.

7 And you go back to Mr. Bishop, who I didn't
8 explain this earlier. Mr. Bishop is the representative
9 of the Water Board on all of this. When you look at
10 these letters from the Division, it's from Mr. Bishop
11 and from the Division's supervisor.

12 Finally, I want to cite Amoco, a supreme
13 court case. I'll quote this case, "Environmental
14 injury, by its nature, can seldom be remediated by
15 money damages and is often permanent or at least of
16 long duration, i.e., irreparable."

17 This contamination to the underground sources
18 of drinking water by these injections is exactly that,
19 irreparable harm. Harm to the oil industry should not
20 be given weight. It needs to be weighed, but
21 irreparable harm needs to outweigh it.

22 The oil companies are sophisticated
23 companies. They are fully aware of the regulations and
24 the regulatory climate. They have very good lawyers.
25 Mr. Dintzer represents a lot of these companies. They

1 should have been applying for exemptions where
2 applicable. They certainly could have been applying
3 back in 2011 when the EPA said that there was a problem
4 with the exemption process. The EPA audit showed that.

5 The company has clearly and wrongly benefited
6 from the Division's negligence. More than negligence,
7 lack of exercising the regulatory duty, not fulfilling
8 the mandatory duty that we talked about. If the
9 injunction is issued and the Division must meet the
10 mandatory duty, the economic harm calculus should not
11 include the loss from the companies injecting without
12 the requisite exemptions. That shouldn't be counted
13 because they've been doing it in violation of the law.

14 When you look at irreparable harm versus
15 economic harm, the Court weighs irreparable harm
16 higher. And I will cite the Alliance for the Wild
17 Rockies.

18 What we are here today asking the Court to do
19 is a preliminary injunction both on the emergency
20 regulations and on this mandatory duty, and the Court
21 must balance really the balance -- the contamination of
22 underground sources of drinking water that can be used
23 currently and in the future in a drought -- historic
24 drought where we need all of the water we can get,
25 versus on the other side of the scale.

1 We have the public's interest in water, which
2 is going to get more and more acute versus harm
3 proposed by the oil industry and regulatory burdens
4 proposed by the Division. The irreparable harm weighs
5 in favor of Plaintiffs' initiating injunction.

6 I already discussed, I believe, likelihood of
7 success of the merits. The combination of those two
8 should require the issuance of an injunction. We ask
9 the Court to do that. Thank you for your time.

10 THE COURT: Thank you, Counselor. Let's take
11 a break for about five minutes.

12 (Recess taken.)

13 THE COURT: Okay. Then I'd like to hear from
14 the defense in this case.

15 MR. KERR: Good afternoon, Your Honor.
16 Deputy Attorney General Brian Kerr for the California
17 Department of Conservation, also referred to as "the
18 Division."

19 Your Honor, at the outset, I would like to
20 thank you for the tentative. I appreciate the time the
21 Court took to review this complicated case and the
22 briefs, as well as the law.

23 I'm going to attempt to answer all of the
24 questions that you asked in a few minutes. At the
25 outset, though, I would like to note a couple things.

1 The first is that as the Court says in the tentative,
2 Plaintiffs bear the burden of proof in these
3 proceedings. This is a preliminary injunction motion.
4 That means they have to show both they are likely to
5 succeed on the merits and they will suffer irreparable
6 harm if the injunction is not issued pending trial.

7 In our opinion, as we said in the brief, they
8 can't show either factor. Your Honor, it seems that
9 there's a misunderstanding on Plaintiffs' part about
10 the regulations themselves, as well as about DOGGR's
11 administrative authority.

12 The regulations do not legalize any
13 injection. They do not allow any injections. They, in
14 fact, set a series of dates by which injections must
15 stop or self-enforcing fines will come into place. In
16 fact, the regulations specifically preserve DOGGR's
17 discretion to administrative orders.

18 As to DOGGR's administrative authority,
19 Plaintiff concedes that DOGGR has issued 23 shut-in
20 orders, and, in fact, DOGGR is continuing to review
21 well operations to see if there's any threat to
22 underground water. Accordingly, Plaintiffs are unable
23 to show any irreparable harm.

24 I would like to talk specifically about
25 DOGGR's process that it would follow in issuing an

1 administrative order. DOGGR, in order to issue an
2 order to an operator, has to go out and identify a
3 violation and collect facts, collect evidence, issue an
4 order, serve process on that order, and then the order
5 can either be appealed by the operator or the operator
6 can come into compliance with the order.

7 If the order is appealed, it's automatically
8 stayed during the pendency of the adjudication. The
9 adjudication likely for the operations at issue in this
10 case would be a formal adjudication before an
11 administrative law judge. That hearing would be set a
12 number of months out, and then there could be a
13 subsequent challenge in superior court to the order.

14 Therefore, the administrative orders that it
15 appears Plaintiff contemplates that DOGGR would issue
16 wouldn't have any effect until the end of the
17 administrative adjudication.

18 In contrast, these regulations set a series
19 of dates, which come into effect fairly quickly, during
20 which time operators must either obtain an aquifer
21 exemption or cease injecting.

22 Now, DOGGR also has the authority to issue an
23 emergency order to an operator. An emergency order
24 remains in effect during administrative adjudication.
25 That's the type of order that Plaintiffs attached to

1 their reply declaration. An emergency order can only
2 be issued if there's an actual threat to public health
3 or water supply.

4 It would be irresponsible for DOGGR to issue
5 an emergency order absent facts to support that order.
6 Due process is applicable to all permit orders. It's
7 important that the state recognizes due process.

8 So the answer to the Court's question about
9 why the regulations are more efficient or fast or
10 better than the administrative order, it has to do both
11 with the nature of the order that can be issued, in
12 this case, where approximately 80 percent of the wells
13 are into hydro-carbon producing zones, and, therefore,
14 unlikely there wouldn't be any evidence of threat to
15 public health or drinking water, and also because of
16 the administrative costs that would come with issuing
17 such orders, not to mention the costs and the burden on
18 the judiciary hearing appeals on those orders.

19 As to how many active wells are governed by
20 the emergency rules, currently some 6,100 well permits
21 are at issue, we estimate. However, it's important to
22 note that the agency defines permits as being covered
23 by the regulations. However, permits may or may not
24 actually have an operation associated with it.

25 For instance, the well may have never been

1 drilled, it may have been plugged or abandoned. So the
2 process that DOGGR's undertaking right now is to go
3 step by step looking at the permits that have been
4 issued as the regulations come into place, and work
5 with the state water board to expeditiously review the
6 state's underground injection program.

7 As to whether there's any conflicts between
8 these regulations and DOGGR's preexisting enforcement
9 mechanisms, there's no conflict at all. I refer the
10 Court to Public Resources Code Sections 3103 and 3106,
11 which describe the department's broad regulatory
12 authority.

13 The legislature specifically said that DOGGR
14 can enact any regulation that it deems necessary to
15 effectuate its statutory permit. That's what these
16 regulations represent. They augment it, not supplant
17 it. They augment it.

18 If there was an injection occurring without
19 any permit at all, if DOGGR came to learn of it, the
20 operator of that well would face significant or
21 potential criminal and civil liability.

22 That actually is what happened in the King
23 9th circuit case that they cite. The U.S. attorney
24 brought a criminal enforcement action against an
25 operator who had been denied a permit by the state, but

1 proceeded to go ahead and drill.

2 As to the case law that the Court asks the
3 parties to discuss, it's our position these are
4 directly on point, the AIDS Health Care case. In that
5 case, as in this case, a public agency was entrusted
6 with discretion to protect public health and the
7 environment.

8 The statutes in that case said that
9 department was to do what was reasonably -- the
10 department was to act in a way that was reasonably
11 necessary to protect the public health, was to take
12 measures that required the exercise of expertise and
13 scientific study. Here, the measures that are required
14 to safely and effectively regulate oil and gas drilling
15 require the exercise of expertise. They require a
16 number of different tools, which include the
17 promulgation of regulations.

18 California Trout is very different from this
19 case. There the statutes provided that the dam owner
20 shall allow sufficient water to pass over a dam in
21 order to ensure fish passage. That is mandatory
22 non-discretion. The state agency was found to have an
23 order by not carrying out that administrative duty and
24 attaching exemption. Here, in contrast the word
25 "shall" is not used in this statute. In fact, the word

1 "may" is used in the statute.

2 As to the BCDC case, that also is very
3 different from this case. There, boats on the
4 San Francisco Bay were found to constitute fill because
5 they were unpermitted activity. No fill permit had
6 been obtained for the boat. This is a case that
7 involves permitted activity and what the state does to
8 regulate that permitted activity.

9 Your Honor, unless you have any other
10 questions, I know there's a number of other people who
11 would also like to speak, so I will submit on brief.

12 THE COURT: Thank you. Who wishes to speak?
13 Remind me who you represent, please.

14 MR. DINTZER: My name is Jeffrey Dintzer. I
15 represent the energy companies who are intervenors.
16 And Mr. Kerr has done a very fine job of articulating
17 responses to the questions that were directed to the
18 DOGGR in the tentative ruling, and I'm not going to
19 retread on his argument.

20 I will, however, focus on two points that the
21 Court made inquiry, it seems, with respect to my
22 clients. The first of those inquiries that the Court
23 made was how would the injunction impact fuel
24 production in the State of California.

25 If the Court were to grant the injunction

1 sought by the plaintiffs in this case and shut down all
2 of these wells ultimately, or order DOGGR to do so,
3 which would require a mandatory injunction, which, as
4 we've articulated in our papers, we believe is totally
5 inappropriate under the circumstances.

6 As best as we can tell, and I don't want to
7 go outside the record, but from the information that is
8 within the declarations that we provided, we believe
9 that approximately 17 percent of the oil production
10 that occurs in California would stop, and that means
11 that the refineries in California, many of them are in
12 Southern California, but some in the northern part of
13 the state as well, they would have to find crude oil
14 from other sources.

15 And it's very difficult to ascertain exactly
16 what that impact would be in terms of, for example,
17 fuel prices, gasoline prices at the pump because there
18 are many different factors that would go into that
19 calculation, which we just don't have enough
20 information about it.

21 We can say that with the pipeline shut down
22 in Santa Barbara and with the closure or modernization
23 of certain refineries, particularly in Southern
24 California, there certainly would be an immediate
25 impact on gasoline distribution in the state. Again,

1 the magnitude of that is very difficult for us to
2 ascertain, but it would be immediate if an injunction
3 were issued as requested.

4 Now, with respect to the second inquiry that
5 the Court has made, which was with respect to jobs, how
6 many jobs would be lost, again, I don't want to talk
7 outside the record, but what we can say is that
8 certainly with respect to the contractors that are
9 employed by my clients, these are the drilling rigs
10 folks that come out and take care. If there's an issue
11 with respect to a particular well, they will come out
12 and do a work-over in some instances.

13 There's all kinds of different contractors
14 and subcontractors that my clients utilize on a daily
15 basis in the oil fields that are operating here in
16 California. There would be thousands of jobs lost if,
17 in fact, the injunction that the plaintiffs seek was
18 ordered and DOGGR was required to shut down the
19 program, as set forth in the moving papers.

20 There's a couple of other things that I want
21 to just clarify. First of all, Mr. Rostov makes much
22 of a point that we know, or that DOGGR knows what wells
23 are in aquifers that are nonexempt, and he says in his
24 argument that we know that because of the declarations
25 that we submitted, but I think that he's pressing his

1 point too hard.

2 The reason for that is as follows: We took
3 the motion at face value and assumed that what they are
4 requesting is that all of the wells that have been
5 identified by DOGGR, these 5,000 wells or so, would be
6 shut down. We didn't go and parse down which wells are
7 actually in nonexempt aquifers or exempt aquifers or
8 which wells would exceed the 10,000 TDS or which wells
9 would be 3,000, 10,000 TDS impacting underground
10 sources of drinking water. We didn't do that because
11 the DOGGR has not made a determination with respect to
12 any of those wells yet.

13 The only category of wells that the DOGGR has
14 made a determination about are what are called the
15 Class I wells, the Category 1 wells, that are
16 identified in the correspondence.

17 Let's take that for a moment. There's 532
18 wells that were in that category. Of the 532 wells
19 that are in that category, the DOGGR, as of mid-May,
20 has completed its review with respect to those wells.
21 It made a determination that 23 of those wells needed
22 to be closed, because they represented some threat to
23 underground sources of drinking water.

24 Now, as Mr. Kerr pointed out, as holders of
25 the permits with respect to those wells, my clients

1 could have said, "We are going to challenge your
2 decision to shut down those wells. We are going to
3 force an administrative law judge to hear evidence with
4 respect to whether or not those wells actually
5 represent a threat to the water supply. We are going
6 to, if we don't like the decision of the administrative
7 law judge, go into the superior court. If we don't
8 like the superior court judge's decision, we can take
9 it to a court a law. We can go to the California
10 Supreme Court if we want to. That's our right under
11 the due process that we are afforded."

12 But not in one instance with respect to those
13 23 wells was there a fight, not one. My clients
14 acceded to the demand of the DOGGR so that further
15 information could be gathered, and if appropriate, will
16 apply exemptions with respect to those wells. And if
17 it's not appropriate, something will have to be done in
18 terms of closing them at some point in time in the
19 future. We did not contest that.

20 We understand that the technology that has
21 gone on with respect to oil recovery in the state has
22 changed over the last 30 years, and that the DOGGR and
23 the Environmental Protection Agency and the
24 stakeholders, my clients, need to work together
25 cooperatively as much as we possibly can. We may have

1 differences, but work together cooperatively to make
2 the system work so that the waters of the state of
3 California are protected, but that we can still go
4 about our business of recovering oil, which is very
5 important to the economy of the state and very
6 obviously important to my clients.

7 Now, there's a second category of wells.
8 It's called the Category 2 wells is really the way to
9 describe it. This is 221 enhanced oil recovery wells.
10 And the DOGGR is currently reviewing those wells. Now,
11 there's no evidence whatever that any of these wells do
12 not have permits.

13 In other words, an NOI was filed, notice of
14 intention to drill the well was put into the file,
15 DOGGR issued an approval, and an approval letter was
16 issued with respect to injection. So these are
17 permanent facilities.

18 And let me point out that those approval
19 matters, under the Safe Drinking Water Act, it doesn't
20 have to be approval with respect to just one well. You
21 can have an entire well field that is approved for
22 injection. In fact, in many instances that's exactly
23 what the case is.

24 And so what is happening now is the DOGGR is
25 going through and it's looking at each one of those

1 settings and determining whether or not, first of all,
2 it's part of the 11, which you are aware of, obviously,
3 from the papers, the 11 disputed aquifers, okay?
4 And/or whether or not in the first instance it's an
5 exempt aquifer.

6 Remember, if it's above 10,000 TDS, and you
7 have hydrocarbons that are already in that zone, the
8 likelihood that that well -- I should say that
9 aquifer -- will ever be used for drinking water is
10 zero. It will not be used for that purpose. That is
11 why the Safe Drinking Water Act specifically says you
12 can reinject into those zones.

13 And with respect to the aquifers where
14 there's 3,000 total dissolved solid, and 10,000 total
15 dissolved solid, there still has to be a determination
16 as to whether or not those aquifers are
17 hydrocarbon-bearing zones and whether or not if you
18 inject into those aquifers, you are going to
19 potentially harm drinking water resources.

20 And so far the DOGGR has been going through
21 that process and has not found one well where it has
22 determined that it has to go back to the operator and
23 shut the well down. Now, will that happen? I don't
24 know. But I will tell you that I believe that the
25 DOGGR and the State Board and certainly the

1 Environmental Protection Agency, which retains
2 jurisdiction over this entire process all of the time,
3 will take action to protect the waters of the State of
4 California, because it is their mandatory duty to do so
5 and because it is the right thing to do.

6 And if, in fact, it were the case that it was
7 demonstrated to one of my clients that, in fact, we
8 were harming an underground drinking water resource
9 that could actually impact public drinking water
10 supplies, I would be very surprised if there will be
11 any fight.

12 Now, there's a third class of wells. And
13 this is the 3,600 cyclic steam wells. As the DOGGR
14 points out, with respect to those wells, all of those
15 wells have permits. All of those wells -- most of
16 those wells have what are called steam flood permits.
17 It's where they take steam and they inject it into the
18 ground and loosen up the oil so that you can produce it
19 out of the ground.

20 Some years ago the DOGGR decided, "Well, we
21 also would like you to maybe get a cyclic steam permit
22 where you put the steam right down the hole where you
23 produce the water and the oil out of," and there was
24 some paperwork confusion with respect to some of those
25 permits. Not very much, but there's some paperwork

1 confusion with respect to some of those permits.

2 The DOGGR has put that into the third group
3 and said, "We are going to sort that out," but we don't
4 believe that really any of those wells pose a threat to
5 underground sources of drinking water and certainly not
6 public drinking water resources.

7 The DOGGR's process by which these
8 regulations that are being challenged and have been
9 articulated is a process that is both effective,
10 because it's going to address the issues to get them in
11 compliance with the MOA, with the EPA, and it's also
12 timely because it sets pretty strict time limits by
13 which my clients, to the extent there are aquifers that
14 are nonexempt, have to come in and establish that they
15 are not impacting drinking water resources.

16 If we are not able to do that, then we are
17 going to get shut down. And if during the process of
18 review, the DOGGR, the State Board or the Environmental
19 Protection Agency, through its review, and all of them
20 will have a say, any of them says, "Hey, you know what?
21 We think this well could be having an impact on
22 drinking water," they have the authority under the Safe
23 Drinking Water Act and under the California Public
24 Resources Code to come in and issue an emergency order
25 and stop that activity immediately. It does not say

1 "even with an appeal." They have to shut it down right
2 there.

3 The only way you can get relief on that is to
4 go to superior court and get a preliminary injunction,
5 which is not easy to do, I will tell you. The EPA is
6 the ultimate supervisor of this program. They gave
7 primacy to the state. The EPA -- and I'm going to --
8 it's helpful just to understand. The EPA wants to make
9 sure that the state is adhering to its obligations
10 under the Safe Drinking Water Act. I don't think that
11 the agency wants to withdraw primacy, but it certainly
12 can if the state does not comply with its dictates.

13 The Environmental Protection Agency is the
14 agency that came to the DOGGR and said, "You need to
15 come up with a plan, DOGGR, that is going to address
16 these issues that we have with respect to the MOA."

17 And they specifically approved of these
18 emergency regulations, as has the State Board. Under
19 Section 144.12 of the Safe Drinking Water, this is Code
20 of Federal Regulations Section 144.12, "Notwithstanding
21 any other provision of this section" -- and I'm quoting
22 from subsection E -- "the director may take emergency
23 action upon receipt of information that a contaminant
24 which is present in or likely to enter a public water
25 system or underground source of drinking water may

1 present imminent and substantial endangerment to the
2 health of persons. If the director is an EPA official,
3 he must determine that the appropriate state and local
4 agency have not taken appropriate action to protect the
5 health of such persons before taking emergency action."

6 So the EPA, if it determines there's a
7 substantial endangerment to public health, can come
8 right in and stop the activity immediately if the state
9 won't do it. And the record is very clear here.

10 The Environmental Protection Agency conducted
11 an audit in 2011. The audit report came out in 2012
12 and found some of these discrepancies. They went back
13 to the state and they said, "You have to fix this."
14 And the state said, "We will do it," and that is what
15 they are doing, and they are doing it in conjunction
16 with and cooperatively with my client, the
17 stakeholders.

18 Just a couple of others, and I will yield to
19 other counsel.

20 With respect to the notion that the
21 regulation is duplicative, the argument has been made
22 by the plaintiffs in this case that the regulations are
23 duplicative. They are not duplicative of anything.
24 All they do is set a schedule. They are certainly not
25 mutually exclusive of any other rights that the DOGGR

1 or the Environmental Protection Agency has, under the
2 Safe Drinking Water Act or under the Public Resources
3 Code.

4 I'm going to defer to Mr. Kerr with respect
5 to the discussion on the AIDS case and the Trout case.
6 I think that those cases are easily understandably
7 distinguishable from the circumstances here. I do
8 think since the Court asked for some discussion about
9 the San Francisco Bay case, the floating fill case, I
10 do want to say a couple things about that case.

11 First of all, that case was a case where
12 these folks were out there in these vessels that
13 weren't navigable. They were dumping stuff in the
14 water and they were clogging up the lanes. So they
15 eventually sued, and they got sued by a government
16 agency who sought to enforce the law, and they never
17 got permits. This is a very different circumstance.
18 In that case they never had permits, and that's why
19 they were enjoined.

20 Further, in that case, that was not a
21 preliminary injunction case. It was a permanent
22 injunction case. Further, there's language in that
23 case which really does distinguish it in terms of the
24 ability to the heart of the issue, because in that
25 case, what the Court said was this fill material, these

1 floating vessels that you've got really presents a
2 public nuisance. This case is not a case about a
3 public nuisance.

4 Plaintiffs are not in any position to bring a
5 claim for a public nuisance in this court because they
6 have absolutely no distinguishable harm from the rest
7 of the public. That duty to enforce the rights of the
8 public with respect to any nuisances that would be
9 carried out is with the DOGGR or the State Board or the
10 Environmental Protection Agency. I think that is a key
11 distinction of the San Francisco Bay case and this
12 lawsuit.

13 Finally, I would like to very briefly address
14 the scope of the injunction. It is unimaginable in my
15 view what this court would order. The Court would
16 order a mandatory injunction against the DOGGR to do
17 what? To do exactly what it's doing, which is to go
18 through the wells' exemption process and determine
19 whether or not, based upon the hydro-geology, the
20 setting and what we know about the aquifers that are
21 being injected into there's an issue, and that's what
22 they are doing. So there's no injunction that's
23 necessary.

24 And frankly, from our perspective, any
25 injunction that would issue would be unconstitutionally

1 vague. Thank you very much for your time, Your Honor.
2 I greatly appreciate the effort that went into
3 preparing the tentative and the questions that were
4 asked. Thank you.

5 THE COURT: Thank you, Counselor. Who else
6 wishes to speak?

7 MR. GREEN: Good afternoon, Blaine Green for
8 the industry group intervenors. I'm going to keep it
9 short because, frankly, points have been made by
10 state's lawyers, as well as Mr. Dintzer.

11 I just want to focus on three things: First,
12 harm; second, the nature of the injunction that's
13 requested; and third, the issue of illegality, and
14 related to that, the cases that are discussed in Your
15 Honor's tentative ruling.

16 First, with regard to harm, we heard from
17 CBD'S counsel that, well, it's a red herring whether
18 any public drinking water systems or any wells are
19 contaminated. I would submit to Your Honor, no, it's
20 not a red herring for purposes -- particularly for
21 purposes of issuance of a preliminary injunction where
22 the balance of harm has to be addressed and has to be
23 weighed.

24 We heard from Mr. Kerr that 80 percent of the
25 wells that are at issue in this case, that is

1 80 percent of the wells that Plaintiffs have cited in
2 their papers, inject into hydrocarbon-bearing zones.
3 That's a highly relevant fact, and the idea that the
4 petitioners would be asking this court to issue a
5 blanket injunction as to every single well where
6 80 percent are injecting into hydrocarbon-bearing zones
7 which wouldn't be used for drinking water is not a red
8 herring.

9 Related to that is the history here. We have
10 essentially more than 30 years of history that DOGGR
11 has been working with the EPA, has had primacy over
12 this injection control program. Exemptions were
13 granted in the early 1980s. There is some lack of
14 clarity in dispute about nine of the aquifers that were
15 exempt or not exempted, but suffice to say, there's
16 been a history of more than 30 years of injections
17 pursuant to permits, DOGGR-permitted injections, and
18 despite that more than 30-year history, the petitioners
19 are unable to point to a single example of an active
20 drinking well or public water system that was
21 contaminated by these injection activities. That is
22 highly significant and not at all a red herring.

23 Moving from harm to the scope of relief and
24 the nature of the relief that is requested, in our
25 opposition papers, we pointed out that the injunction

1 requested is vague and uncertain, it's imprecise and
2 not clear exactly what wells it would relate to.

3 The response that -- the reply from CBD is, I
4 think, interesting. We heard it again here today. The
5 argument that CBD raises is there's two ways that this
6 court could issue an order and DOGGR could satisfy that
7 order. One would be to order immediate cessation of
8 all of these thousands of injection wells. Or another
9 would be that, quote, "DOGGR could also adopt an
10 alternative administrative process as long as it
11 complied with its duty and not violate any other laws
12 such as the EPA." That's from the brief at page 5.

13 In effect, Your Honor, the emergency
14 regulations are this kind of alternative administrative
15 process where, in the words of the Court's tentative,
16 they can be viewed as an alternative mechanism to
17 achieve the same results as individual administrative
18 actions, albeit more efficiently.

19 This is a very important point. The Court,
20 in considering the preliminary injunction, needs to
21 consider the harm to both sides, as well as the benefit
22 that would be gained by the injunction that's requested
23 versus not issuing the injunction.

24 Third, with regard to illegality, just
25 briefly, the cases that the petitioners have relied on,

1 the Cal. Trout case, the U.S. versus King case and BCDC
2 case, in all of these cases illegality was established.
3 The California Trout case actually came back up to the
4 court of appeal after having previously been
5 adjudicated in a prior case, where the court of appeal
6 had ordered, remanded to the Superior Court to take
7 certain actions. The Superior Court didn't do that.
8 It went back up to the court of appeal. The issue of
9 the legality of the action had already been determined
10 that it was an illegal action. That was a point which
11 the court of appeal ordered essentially a permanent
12 injunction at that point, very different from our case.

13 The U.S. versus King case, the BCDC case,
14 both cases in which illegality, there wasn't a dispute
15 as to illegality. They were not permitted activity.
16 In the U.S. versus King case, the permit was applied
17 for and was denied. The BCDC case, there were no
18 permits.

19 I'm just going to end by going back to --
20 reflecting back on the last time that we had a hearing
21 in your courtroom with respect to the intention of
22 motion, Your Honor had a number of questions for
23 counsel, for the petitioners about whether
24 determination had been made as to the illegality of the
25 injections.

1 And Petitioner's counsel admitted at the
2 hearing, quote, "No determination has been made," end
3 quote, by any administrator or judicial body about the
4 illegality of the injection wells that are sought to be
5 shut down.

6 And the petitioners explained the courts have
7 not looked at it yet because they don't have the
8 information that's required. It's impossible to make
9 that call from a court's perspective, because no one
10 has bothered to go through the exemption process and
11 there is a whole lengthy exemption process where you
12 have to get DOGGR's approval, the State Water Board's
13 concurrence, written approval from the EPA, the federal
14 EPA. That is the process, Your Honor. There's no need
15 for the injunction Petitioners are requesting. Thank
16 you.

17 THE COURT: Anyone else? You have the
18 burden, and you have the last word, Counsel.

19 MR. ROSTOV: May I take a five-minute break?

20 THE COURT: We have to go. In fact, I'm
21 supposed to be done by 4:30. We have another case.

22 MR. ROSTOV: I appreciate it. Happy to go
23 right now. I'm just going to go in order of what
24 people said. I think that would be the easiest way to
25 address things.

1 First, the Division talked about how there
2 was 6,100 permits. We brought this case when there
3 were 2,500 permits. On May 15th, they discovered
4 another 3,600 that had to do with cyclic well
5 injection. We think injunction should just apply to
6 the list that we brought the case based on. Maybe in
7 the future, we amend the case, but that's not at issue
8 here.

9 What is interesting about that 3,600 is DOGGR
10 developed a plan allowing these agency -- I mean, these
11 operators more time to essentially not comply with the
12 Safe Drinking Water Act, and all of a sudden, they've
13 said, "We have 3,600 more permits that are not
14 complying with it." It was a major revelation.

15 We are focusing on the 2,500 permits at
16 issue. DOGGR cites to their authority under the Public
17 Resources Code, and since there's no conflict, they are
18 citing to state law. It's true that the state law
19 gives them some discretion when permitting, but what we
20 are talking about is the memorandum of authority
21 between the US EPA and the Division that has a flat
22 prohibition on allowing injections unless there's an
23 aquifer exemption. That's codified in federal law.
24 It's enforceable under state law. So there is a
25 conflict. I spent a lot of time explaining the

1 conflict. I will not go into it further.

2 It addresses a couple of issues that people
3 were raising. It was interesting the Division said,
4 "If you are injecting without a permit, there could be
5 potential criminal and civil liability," but
6 essentially what the regulations have done is say, "You
7 have more time to comply with the Safe Drinking Water
8 Act." But as I already mentioned, they don't have the
9 authority to do it, but second, they are shielding the
10 companies from potential criminal liability. They
11 still operate, but can the citizens?

12 I want to point you to 17 -- to the Section
13 1779.1. It very clearly says -- I'll say this very
14 slowly, "An underground injection project approved by
15 the Division for injection into aquifer that has not
16 received an aquifer exemption is subject to the
17 following restrictions." And then it sets future dates
18 for October 15th, 2015 and February 2017.

19 That is in direct conflict with what we
20 explained the statutory structure is. You can't allow
21 the injections until there is approved permit -- until
22 there's approved exemption for that body of water. And
23 nobody said there's approved exemptions for the body of
24 water affecting the list of wells at issue.

25 The Division's lawyer also talks about --

1 saying how the AIDS case is more relevant than the Cal.
2 Trout. We disagree, but the AIDS case does have
3 similar language to the state law that DOGGR has about
4 discretion generally for the agency, but the memorandum
5 of agreement -- the primacy agreement has a direct flat
6 prohibition that is a mandatory duty.

7 So there may be some discretion in some parts
8 of DOGGR's permit authority, but when it comes to duty
9 to prohibit injections, that's a mandatory duty that's
10 been established by their agreement with the EPA and
11 federal regulation, because it was codified in federal
12 regulation.

13 Once again, we believe Cal. Trout is right on
14 target. It doesn't matter that it was -- they have
15 found illegality in that case. We are citing it for
16 the proposition that you can enforce a mandatory duty.
17 The mandatory duty there was failure to comply with the
18 statute.

19 The mandatory duty here is the failure to
20 comply with the prohibition to prohibit injections into
21 nonexempt aquifers. I think it's still -- the
22 government talks about the BCDC case, so did
23 Mr. Dintzer. They were talking about how it was
24 unpermitted, and that's why it's distinguishable.

25 Mr. Dintzer went on to also talk about that

1 was a public nuisance case as opposed to a statutory
2 case, but that's just not right. The case was about
3 the McAteer case, which I said earlier. That act
4 essentially says you can't fill the bay. There were
5 boats that were in the bay, and they were considered
6 fill by the agency.

7 So they were determined to be in violation of
8 the law, and then the Court said when we adopt these
9 environmental statutes, that is essentially codifying,
10 legalizing a public nuisance statute. It's taking the
11 common law and defining what the public nuisance is,
12 and then the Court said if you are in violation of
13 that, you know, that can justify a preliminary
14 injunction.

15 That's what we are doing here. It's the same
16 analogous situation, where we have injections into
17 nonexempt aquifers, and there's a violation of the
18 statute, and the legislature has made the decision --
19 congress made the decision. DOGGR, the agency, took
20 the responsibility, as Mr. Dintzer said, to enforce
21 this regulation. They haven't done it. And that is
22 the evidence -- that is part of the evidence of why we
23 deserve a preliminary injunction.

24 Now I want to turn to other point that
25 Mr. Dintzer made. He talked about 17 percent of the

1 oil production would stop. Refineries need to have
2 crude oil, contractors, thousands of jobs. One thing
3 that he didn't mention is that the declaration of
4 Matthew Hagemann said there's alternatives.

5 First of all, the oil industry shouldn't be
6 operating in nonexempt aquifers in violation of the
7 law. And second of all, they have alternatives to this
8 type of disposal. And I do want to be clear, and he
9 mentioned this again too, there's 5,000 something
10 wells, but we are talking about the 2,500 wells, that
11 list.

12 That list has changed a little because DOGGR
13 made some changes to it. They found some wells were --
14 didn't qualify as federal standard, but the majority --
15 not -- you know, I'd say more than 90 percent are still
16 on the list. That's the list we should use for the
17 injunction.

18 Mr. Dintzer also talks about how we've been
19 reviewing the class I wells. That's exactly the point.
20 They have reviewed the class 1 wells. They have all of
21 the information they need. I read you the attachment
22 to that letter. I'm not going to read them again
23 because we are pressed for time. That demonstrates
24 that they reviewed them. They can issue orders.

25 And I missed one point that the Division did

1 I just want to go back to. He talked about the
2 administrative process, and he took two points.
3 There's a very complicated administrative process where
4 we have administrative law judge and a lawsuit, and
5 then we have appeal. First appeal and lawsuit. It's
6 going to take months, maybe years.

7 But then he also mentioned -- Mr. Dintzer
8 mentioned, as well, that there's also ability to do
9 these emergency orders. DOGGR has the ability to do
10 emergency orders. Mr. Dintzer said that process is
11 they do the emergency order, and then you have to go to
12 superior court to get a preliminary injunction. DOGGR
13 can fulfill its mandatory duty by doing the emergency
14 orders. That May 15 letter already shows everything
15 you need to -- everything DOGGR needs to issue the
16 emergency orders. There's the injection into
17 underground sources of drinking water that do not have
18 exemptions.

19 There was other point that Mr. Dintzer and, I
20 think, DOGGR made, and that is they said, "If there
21 were wells that were harmful, we shut them down." They
22 use the standard saying if something potentially
23 impacts public water supplies, they said in several
24 places, we cite it in the briefs, that they would shut
25 down the wells immediately.

1 They identify in the May 15 letter 53 of
2 those wells. 23 wells they already shut down. The
3 other 30, all they did in the May 15th letter was ask
4 for information from the Water Board and from the oil
5 companies. They did not shut down those wells.

6 If you look at their letters, the thing we
7 cite is they say, "We are going to immediately shut
8 down those wells that are affecting -- potentially
9 impacting public water supplies." That was their
10 standard, a standard that we don't even think applies,
11 because the real standard is presumption of harm of
12 injection into underground sources of drinking water,
13 but even under their standard they are not doing their
14 job.

15 And then Mr. Dintzer made an interesting
16 point too. He said, "We are going to have to evaluate
17 if my clients are going to need exemptions. For some
18 of them we made exemptions, we'll apply for. Others we
19 won't." He's essentially saying some of those wells on
20 that list, they might not apply for exemptions.

21 So if they do not apply for exemptions, all
22 that means is they gave them extension, illegal
23 extension because they had no authority under the Safe
24 Drinking Water Act to overturn this flat prohibition
25 that I've discussed several different times.

1 And then they also talk about the enhanced
2 oil recovery category, and saying how there's 2,021
3 wells there, and those are in oil-bearing areas, so we
4 can't drink that water. Well, we cited to the director
5 of the Department of Conservation, who essentially
6 said, "We used to have a policy that said, 'Well, if
7 the oil was there, we exempted it.'" He then said,
8 "Oh, that's incorrect. And why it's incorrect is they
9 have to do the exemptions first." They've done the
10 opposite. So you cannot say, based on the record that
11 these EORs are not -- do not have drinking water, that
12 complies -- that drinking water as defined by the
13 federal Safe Drinking Water Act.

14 The way they would have to do that is they
15 would have to go through the exemption process. As I
16 mentioned earlier, it's a long process.

17 Mr. Dintzer also mentioned permits. He said
18 that, "Our companies got these permits, so we have to
19 do application. We got permits. We are good to go."
20 But the agency, since 2011, as he mentioned, has known
21 that these injections are to nonexempt aquifers. They
22 are not good to go. It shouldn't allow it because it's
23 a violation of statute. It violates the statute that
24 supports the harm for the injunction.

25 And both Mr. Dintzer and Mr. Green, I

1 believe, talked about these 11 disputed aquifers.

2 First of all, it's important to note that that is also
3 kind of a red herring. There's about 2,500 wells at
4 issue. Only 97 of the wells are even in those
5 aquifers.

6 Then the more interesting thing is 87 of them
7 are in what they call the Class I category, the best,
8 highest-quality drinking water. But because they are
9 part of the aquifers, instead of setting the deadline
10 for October of this year, they've given them until
11 December 2016. They are inconsistent in the way they
12 are treating some of the water under their regulations.
13 And several people have said there's not one well of
14 harm. We haven't shown there's one current active
15 drinking water source that's harmed. That's not the
16 standard. The standard is the harm to the aquifers.

17 Mr. Bishop, if you look at that testimony, he
18 was explaining, and also we put in his testimony from
19 the State Water Board, they were not reviewing these
20 exemptions. They weren't reviewing the hydrology.
21 There hasn't been any study until recently. It's
22 almost like saying we haven't studied, so they can't
23 prove there's no harm to the public water.

24 Since we filed this case, we are starting to
25 see the harm that they have identified in their May 15

1 letter. Mr. Dintzer also said that DOGGR will take
2 action. They have the regulatory responsibility to
3 take action, but they take action in the wrong way.

4 First of all, they haven't been taking action
5 for years. They took action in the wrong way by
6 adopting the regulations that are inconsistent with the
7 Safe Drinking Water Act.

8 And then Mr. Dintzer also talked about how
9 EPA came to DOGGR to come up with the plan, and that
10 the EPA had powers to do something else if they wanted
11 to. That's not true. EPA has been forcing DOGGR to do
12 something about this for several years. DOGGR came up
13 with the plan. DOGGR came up with the plan to do these
14 emergency regulations. DOGGR proposed something that
15 violates and is inconsistent with the Safe Drinking
16 Water Act. The EPA letter back to DOGGR is no more
17 than an informal letter that has no force of law. We
18 explained that in the brief, so I won't talk about
19 that.

20 Mr. Dintzer also makes a point about there's
21 no duplication of anything, but there's already the
22 prohibition on not having injections in nonexempt
23 aquifers. What this really is about is inconsistency,
24 the violation, the fact that DOGGR didn't have the
25 power to adopt regulations that go -- that essentially

1 create an extension or something in conflict with the
2 Safe Drinking Water Act.

3 And then I just want to talk some about what
4 counsel said. He distinguished all three of our cases
5 based on the fact that there's no illegality. I
6 already talked about San Francisco Bay. I won't talk
7 about that again. We used Cal. Trout for the
8 proposition that you can enforce a mandatory duty, and
9 that's the basis for the second cause of action of
10 the -- that's the basis for our mandatory injunction,
11 which would be an order to the agency. It's not you
12 ordering shutdown of the wells. It's an order to the
13 agency saying, "You need to comply with mandatory
14 duty," and at that the point the Agency must do what
15 they will do.

16 If they didn't comply with that order, EPA
17 may revoke their primacy. I mentioned San Francisco
18 Bay. I mentioned Cal. Trout.

19 The King case we really just used for the
20 presumption for the legal standard for the Safe
21 Drinking Water Act. That really shows a couple things.
22 It shows that that case was about putting water into
23 injection wells. It was saying even if you put water
24 into an injection well, because of the complicated
25 hydrology and geology, that could even cause harm. You

1 need to have the presumption of it causes harm to human
2 health. You have a presumption of not doing that until
3 you can prove it safe. That's the opposite of what is
4 happening here.

5 And then Mr. Green also talked about how our
6 proposed injunction was unconstitutionally based. I hope
7 to your satisfaction I've explained it. I want to say
8 that we have two causes of action. We are asking for
9 two things: For the enjoining of the emergency
10 regulation, as well as this enforcement of the
11 mandatory duty. We believe we should win on the merits
12 of both. We believe we share the harm on both. The
13 irreparable harm weighs more in favor for us. I think
14 you should issue injunction on both. You could also do
15 half of what we are asking, as well. I just want to
16 point that out.

17 I already addressed a lot of the points that
18 Mr. Green made. It is worth noting again that he made
19 the point about 80 percent of these injection wells are
20 in hydrocarbon-bearing zones that can't be used for
21 drinking water. That's not true. It's just not known.

22 What is known is there's a presumption that
23 they can't inject into them until they've done the
24 work. They haven't done the work. Mr. Dintzer even
25 admitted they haven't done the work. And some of them,

1 they may never do it. He also made this point about
2 how there's been 30 years of injections and there's
3 never been an effect on public water. There's new
4 permits occurring now. There's permits issued last
5 year.

6 But the main point in response to that is
7 what I already made: They haven't been studying this.
8 They are finally looking at it. If you look at the
9 letter to the legislature that I mentioned and also the
10 transcript of the Water Board and of the legislative
11 hearing, you will see that there has been a study of
12 it. At that time maybe the senator was asking
13 Mr. Bishop -- he talked about the effects on one water
14 supply.

15 They had studied one water supply well. They
16 haven't study the universe. There's a letter in the
17 documents that talks about a couple hundred water
18 supply wells. The point is they haven't studied the
19 universe.

20 Then they made a point about administrative
21 regulations are an alternative mechanism to doing
22 enforcement. And that just goes back to our case cite
23 of Canteen, and the fact that they don't have the
24 authority to do those emergency regulations. I think
25 I've addressed everything.

1 I just want to conclude with a couple things.
2 No one is disputing the contamination we allege. They
3 are not disputing that injections into underground
4 sources of drinking water can cause contamination.
5 Mr. Bishop said it, but there was nothing in the record
6 disputing that.

7 What they are disputing is we just looked at
8 the wrong thing. We are looking at underground
9 drinking water. We should look at the current water
10 supply wells. If you look at the statute and the
11 requirement of the statute, it says look at underground
12 sources of drinking water. That's the whole point of
13 the statute.

14 And by the time we find the harm, it could be
15 too late. That's why we have the productive -- that's
16 why Congress set up the Safe Drinking Water Act the way
17 it did as a preventive statute. I would encourage you
18 to find for us on the merits and as well for
19 preliminary injunction relief.

20 THE COURT: Very good. Thank you,
21 Counselors. I've been taking notes. You will get my
22 decision sometime next week.

23 MR. ROSTOV: Thank you.

24 MR. DINZTER: Thank you.

25 (Time noted 4:43 p.m.)

1 STATE OF CALIFORNIA)
2) ss.
3 CONTRA COSTA COUNTY)
4
5

6 I, DREW E. COVERSON, Certified Shorthand
7 Reporter, do hereby certify that as such I took down in
8 stenotype all of the proceedings in the within-entitled
9 matter, CENTER FOR BIOLOGICAL DIVERSITY and SIERRA
10 CLUB, nonprofit corporations vs. CALIFORNIA DEPARTMENT
11 OF CONSERVATION, DIVISION OF OIL, GAS, AND GEOTHERMAL
12 RESOURCES, and DOES 1 through 20, et. al, heard before
13 the Honorable GEORGE C. HERNANDEZ, JUDGE, on JULY 2,
14 2015, and that I thereafter transcribed my stenotype
15 notes into typewriting through computer-assisted
16 transcription, and that the foregoing transcript
17 constitutes a full, true, and correct transcription of
18 the proceedings held at the aforementioned time.

19 IN WITNESS WHEREOF, I have hereunto
20 subscribed my name this date, July 10th, 2015.
21
22
23

24 DREW E. COVERSON
25 Certified Shorthand Reporter #10166